

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARK ANTHONY WELCH,

Defendant.

8:20-CR-206

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION**

This matter is before the Court on the magistrate judge's Findings and Recommendation, [Filing 122](#),¹ which recommends dismissing the Indictment against defendant Mark Anthony Welch without prejudice following the Court's finding of incompetency, [Filing 109](#); [Filing 89](#). No objections were filed within fourteen days of the Findings and Recommendation. *See* NECrimR 59.2.

Under [28 U.S.C. § 636\(b\)\(1\)](#),

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

[28 U.S.C. § 636\(b\)\(1\)](#). The Eighth Circuit Court of Appeals has held that "it is reversible error for the district court to fail to conduct a de novo review of a magistrate judge's report where such review is required." [Woods v. Burt](#), No. C 06 3038 MWB, 2007 WL 1959102, at *1 (N.D. Iowa July 3, 2007) (citing [Hosna v. Groose](#), 80 F.3d 298, 306 (8th Cir. 1996)). Nevertheless, [28 U.S.C. § 636\(b\)\(1\)](#) only requires *de novo* review of "those portions of the report or specified proposed findings or recommendations to which objection is made." [28 U.S.C. § 636\(b\)\(1\)](#). Accordingly, those portions of a findings and recommendation to which no objection is made are reviewed only

¹ The document at [Filing 122](#) also included orders by the magistrate judge. No objections have been made to those orders, so they are not before the undersigned judge.

for “plain error.” See *Griffini v. Mitchell*, 31 F.3d 690, 692 (8th Cir. 1994) (reviewing factual findings for “plain error” where no objections to the magistrate judge’s report were filed).

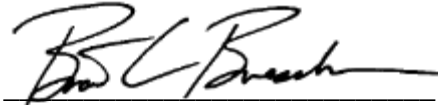
The Court has thoroughly reviewed the record in this case, including the magistrate judge’s Findings and Recommendation. The Court agrees with the Findings and Recommendation and adopts it in its entirety. See *United States v. Copley*, No. 05-00377-01-CR-W-HFS, 2008 WL 1348943, at *1 (W.D. Mo. Apr. 8, 2008) (ordering the dismissal without prejudice of the indictment when the defendant was found not competent to stand trial). Accordingly,

IT IS ORDERED:

1. The magistrate judge’s Findings and Recommendation, [Filing 122](#), is adopted in its entirety; and
2. The Indictment, [Filing 1](#), is dismissed without prejudice.

Dated this 25th day of April, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "B. C. Buescher", written over a horizontal line.

Brian C. Buescher
United States District Judge